

(Underline indicates addition)

(~~Strikeout~~ indicates deletion)

(Boxed and Shaded) indicates explanatory language and is not considered part of the amendment)

## **AN ORDINANCE AMENDMENDING AND CODIFYING THE RESOURCE PROTECTION ORDINANCE**

**The Board of Supervisors of the County of San Diego ordains as follows:**

**Section 1.** The Board of Supervisors finds and determines that the following amendments will provide a necessary update to certain sections of the County Resource Protection Ordinance. The amendments made are intended to allow for improved fire protection in subdivision design by permitting adequate fire access and buffers. Amendments made by this ordinance are also intended to clarify the definitions of Significant Prehistoric or Historic Sites, wetlands, and wetland buffers, consistent with past and present interpretations of these sections.

**Section 2.** The San Diego County "Resource Protection Ordinance", as adopted by Ordinance No. 7631 and amended by Ordinances Nos. 7685, 7739, and 7968, is hereby amended, and is hereby codified as Chapter 6 (commencing with Section 86.601) of Division 6 of Title 8 of the San Diego County Code, to read as follows:

Currently, the RPO is a "stand alone ordinance." However, most of the County's land use regulations (e.g. Zoning Ordinance, Biological Mitigation Ordinance, Weed Abatement Ordinance, Fire Code, Building Code, and Subdivision Ordinance) are chapters within the San Diego County Regulatory Code. Since RPO involves the regulation of land use, staff feels that the ordinance should be part of the Regulatory Code. The text changes from "Article" to "Chapter" and "Section" are a result of this change.

### **CHAPTER 6. RESOURCE PROTECTION ORDINANCE**

#### **SEC. 86.601. Findings, Purpose and Intent.**

The Board of Supervisors finds that the unique topography, ecosystems and natural characteristics of the County are fragile, irreplaceable resources that are vital to the general welfare of all residents; that special controls on development must be established for the County's wetlands, floodplains, steep slopes, sensitive biological habitats, and prehistoric and historic sites; and that present methods adopted by the County must be strengthened in order to guarantee the preservation of these sensitive lands. This Chapter will protect sensitive lands and prevent their degradation and loss by requiring the Resource Protection Study for certain discretionary projects. This Chapter will also preserve the ability of affected property owners to make reasonable use of their land subject to the conditions established by this Chapter. It is the intent of this Chapter to increase the preservation and protection of the County's unique topography, natural beauty, diversity, and natural resources and a high quality of life for current and future residents of the County of San Diego. Nothing in this Chapter shall be construed to reduce any requirements to protect environmentally sensitive lands contained in any other County plan, ordinance, policy, or regulation. It is not the intent of this Chapter to prohibit all development on steep slopes, but only to limit the amount of disturbance consistent with the encroachment allowances herein.

**SEC. 86.602. Definitions.**

For the purposes of this Chapter, the following words and phrases shall have the following meanings. These definitions are to be broadly interpreted and construed to provide maximum protection to the environmentally sensitive lands and resources protected by this Chapter.

- (a). “Aquaculture”: A form of agriculture devoted to the controlled growing and harvesting of fish, shellfish, and plants in marine, brackish, and fresh water.
- (b). “Ecosystem”: A system made up of a community of organisms and its interrelated physical and chemical environment.
- (c). “Environmentally Sensitive Lands”: These lands shall consist of wetlands, floodplains, steep slope lands, sensitive habitat lands, and lands containing significant prehistoric and historic sites as defined by this Section.
- (d). “Essential Public Facility or Project”: Any structure or improvement necessary for the provision of public services, which must be located in the particular location to serve its purpose and for which no less environmentally damaging location, alignment, or non-structural alternative exists.
- (e). “Feasible”: Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, and technological factors. Infeasibility must be supported by substantial evidence developed through a good faith effort to investigate alternatives that would result in less adverse impacts. A substantial modification to the configuration of a development, or reduction in density or intensity, would not be considered infeasible unless supported by the above factors.

Since the term “feasible” is used within this ordinance, it is necessary to include a definition.

- (f). “Filed”: For the purposes of this Chapter, an application is “filed” on the date that a complete and pending application is filed with the County of San Diego and the required fees paid therefore, as follows:
  - (1) For projects served by public sewer, upon the filing of the application with the agency authorized to grant the ultimate permit or approval; or
  - (2) For projects not served by public sewers, upon the filing of the application for review by the Department of Health Services; provided, that within 180 days of said filing, an application for the ultimate permit or approval is filed.
- (g). “Fill”: Any material or substance which is deposited, pushed, dumped, pulled, or otherwise transported or moved to a new location for the purpose of elevating an area above the floodplain. Examples of fill materials include but are not limited to earth, excavated or dredged materials, sand, gravel, rock, asphalt, refuse and concrete rubble.

- (h). "Floodplain": The relatively flat area of low lands adjoining and including the channel of a river, stream watercourse, bay, or other body of water which is subject to inundation by the flood waters of the 100 year frequency flood as shown on floodplain maps approved by the Board of Supervisors.
- (i). "Floodplain Fringe": The area within the floodplain that is not in the floodway.
- (j). "Floodway": All land, as determined by the Director of Public Works, which is necessary to pass the 100 year flood without increasing the water surface elevation more than 1 foot, (or in the case of San Luis Rey River, San Dieguito River, San Diego River, Sweetwater River, and Otay River, upon adoption by the Board of Supervisors of revised floodplain maps which so specify, the increase shall be no more than  $\frac{2}{10}$ ths of 1 foot. Floodways are determined by removing equal conveyance (capacity for passing flood flow) from each side unless another criterion controls.

The proposed change is to remove redundancies and establish a criterion that defines a floodway. Removed from the current definition are the land use restrictions as they do not define a floodway, but rather limit allowable impacts. Use restrictions and limitations in floodways are addressed in Section 86.604(c). The revised definition meets federal standards and is consistent with the National Flood Insurance Program (NFIP) that is administered by FEMA.

- (k). "Mature Riparian Woodland": A grouping of sycamores, cottonwoods, willows and/or oak trees having substantial biological value, where at least ten of the trees have a diameter of six inches or greater.
- (l). "Native Vegetation": Vegetation composed of plants which originated, developed, or were produced naturally in the San Diego region and were not introduced directly or indirectly by humans. Native vegetation may be found in but is not limited to marshes, native grasslands, coastal/inland sage scrub, woodlands, and forests.
- (m). "Riparian Habitat": An environment associated with the banks and other land adjacent to freshwater bodies, rivers, streams, creeks, estuaries, and other surface-emergent aquifers (such as springs, seeps, and oases). Riparian habitat is characterized by plant and animal communities which require high soil moisture conditions maintained by transported freshwater in excess of that otherwise available through local precipitation.
- (n). "Sensitive Habitat Lands": Land which supports unique vegetation communities, or the habitats of rare or endangered species or sub-species of animals or plants as defined by Section 15380 of the State California Environmental Quality Act (CEQA) Guidelines (14 Cal. Admin. Code Section 15000 et seq.), including the area which is necessary to support a viable population of any of the above species in perpetuity, or which is critical to the proper functioning of a balanced natural ecosystem or which serves as a functioning wildlife corridor.

“Unique vegetation community” refers to associations of plant species which are rare or substantially depleted. These may contain rare or endangered species, but other species may be included because they are unusual or limited due to a number of factors, for example: (a) they are only found in the San Diego region; (b) they are a local representative of a species or association of species not generally found in San Diego County; or (c) they are outstanding examples of the community type as identified by the California Department of Fish and Game listing of community associations.

- (o). “Significant Prehistoric or Historic Sites”: Sites that provide information regarding important scientific research questions about prehistoric or historic activities that have scientific, religious, or other ethnic value of local, regional, State, or Federal importance. Such locations shall include, but not be limited to: any prehistoric or historic district, site, interrelated collection of features or artifacts, building, structure, or object included in the National Register of Historic Places to which the Historic Resource (“H” Designator) Special Area Regulations have been applied; or one-of-a-kind, locally unique, or regionally unique cultural resources which contain a significant volume and range of data and materials; and any location of past or current sacred religious or ceremonial observances protected under Public Law 95-341, the American Indian Religious Freedom Act or Public Resources Code Section 5097.9, such as burial(s), pictographs, petroglyphs, solstice observatory sites, sacred shrines, religious ground figures, and other formally designated and recognized sites which are of ritual, ceremonial, or sacred value to any prehistoric or historic ethnic group.

Changes are proposed in order to clarify the definition and make it more consistent with the way in which the ordinance has been interpreted and applied by the Department. Key to this clarification is to remove inconsistent or vague language that is difficult to interpret and replace it with language that makes it clearer that an RPO site should demonstrate a level of significance that is higher than that of a CEQA significant site. As such, only a subset of CEQA significant sites will meet the more stringent definition an RPO significant site.

- (p). “Steep Slope Lands”: All lands having a slope with natural gradient of 25% or greater and a minimum rise of 50 feet, unless said land has been substantially disturbed by previous legal grading. The minimum rise shall be measured vertically from the toe of slope to the top of slope within the project boundary.

- (q). “Wetland”:

(1) Lands having one or more of the following attributes are “wetlands”:

- (aa). At least periodically, the land supports a predominance of hydrophytes (plants whose habitat is water or very wet places);

Grammatical change

- (bb). The substratum is predominantly undrained hydric soil; or

- (cc). It is an intermittent or perennial stream, and substratum is predominantly non-soil in which waters from a tributary drainage area of 100 acres or larger flow.

This additional language clarifies current interpretation of the regulation. The modification to specify a drainage area of 100 acres or larger corresponds with Section 87.803(38) of the County's Grading Ordinance, which defines a watercourse.

- (2) Notwithstanding paragraph (1) above, the following shall not be considered "Wetlands":

- (aa) Lands which have attribute(s) specified in paragraph (1) only because of man-made structures (e.g., culverts, ditches, road crossings, or agricultural ponds), provided that the Director of Planning and Land Use determines that they:

(i) Have negligible biological function or value as wetlands;

(ii) Are small and geographically isolated from other wetland systems;

(iii) Are not Vernal Pools; and,

(iv) Do not have substantial and viable populations of wetland dependent sensitive species.

Under the current language, RPO prohibits any impacts made to wetlands that are located within man-made conveyance systems such as culverts, ditches, and agricultural ponds, even if those wetlands are small in scale and have negligible biological value. This prohibition is commonly referred to as the "no touch rule." The proposed language will lift the no touch rule on wetlands located within these man made systems, so long as the above identified findings are made. Any impacts made to these wetlands will still require mitigation under CEQA and other State and Federal regulations.

- (bb) Lands that have been degraded by past legal land disturbance activities, to the point that they meet the following criteria as determined by the Director of Planning and Land Use:

(i) Have negligible biological function or value as wetlands even if restored to the extent feasible; and,

(ii) Do not have substantial and viable populations of wetland dependant sensitive species.

Under the current language, RPO prohibits any impacts made to wetlands; even if they have been substantially degraded and have negligible biological function. The proposed language will lift the no touch rule on such degraded wetlands, but any impacts will still require mitigation under CEQA and other State and Federal regulations.



(cc) Wetlands that would not exist under natural conditions, but are the result of, and sustained by an artificial transient water source (e.g., agricultural irrigation runoff) and the Director of Planning and Land Use determines that it is assured that the water source will not continue to be available to support wetland vegetation. While such lands are not required to be placed in an open space easement, any direct project related impacts that will occur as a result of the development shall be mitigated.

In some cases, agricultural runoff will create a wetland. Although the wetland will cease to exist once the water supply is removed (area is developed), RPO prohibits any impacts to the area. If the County is assured that the water source that feeds the wetland will not continue to be available to support the wetland vegetation, this provision will allow impacts to the wetland, but again, those impacts are still required to be mitigated under CEQA and other State and Federal regulations.

(Note: Activities on lands not constituting "Wetlands" because of this paragraph (2) may still be subject to mitigation, avoidance and permitting requirements pursuant to the California Environmental Quality Act or other applicable County, state and federal regulations.)

This is a reminder to the reader that wetlands which are impacted may still require mitigation under CEQA and other State and Federal regulations.

- (r). "Wetland Buffer": Lands that provide a buffer area of an appropriate size to protect the environmental and functional habitat values of the wetland, or which are integrally important in supporting the full range of the wetland and adjacent upland biological community. Buffer widths shall be 50 to 200 feet from the edge of the wetland as appropriate based on the above factors. Where oak woodland occurs adjacent to the wetland, the wetland buffer shall include the entirety of the oak habitat (not to exceed 200 feet in width).

This language clarifies existing department practices. When determining buffer requirements, the following factors are considered by staff: existence of hydrophytic vegetation, condition of existing wetland, whether the wetland/buffer serves a wildlife corridor, existence of sensitive species, connectivity and condition of the wetland up and down stream. Scientific studies have shown that a minimum buffer length of 50 feet is necessary in order to effectively protect wetland vegetation. In the past, the County has allowed minimum buffer lengths of 25 feet, but in those cases the wetland typically being protected was a man-made drainage system such as a culvert or drainage ditch. Given the changes being proposed to the wetlands definition regarding such systems, a 25 foot buffer is no longer necessary. Also, wetland buffers legally are not counted towards onsite mitigation. The maximum buffer length that is being proposed only limits the size of the designated wetland buffer; it does not limit the amount of open space that is required under CEQA.

SEC. 86.603. Resource Protection Study and Findings.(a). Application of Regulations. Prior to approval of any of the following types of discretionary applications, a Resource Protection Study must be completed and the approving

authority shall make a finding that the use or development permitted by the application is consistent with the provisions of this Chapter:

Tentative Parcel Maps

Tentative Maps

Revised Tentative Parcel Maps and Revised Tentative Maps

(Review shall exclude areas unaffected by the proposed revisions)

Expired Tentative Parcel Maps and Expired Tentative Maps

Rezones (Excluding those applying the Sensitive Resource Area designator and those which have been initiated by the County)

Major Use Permits

Major Use Permit Modifications

(Review shall exclude areas unaffected by the proposed Modifications)

Certificates of Compliance filed pursuant to Sections 81.616.1 or 81.616.2 of this Code (Excluding condominium conversions)

Site Plans (Excluding those Statutorily or Categorically Exempt from review under the CEQA and those required by a Sensitive Resource Area Designator)

Administrative Permits (Excluding those Statutorily or Categorically Exempt from review under the CEQA and those for clearing)

Vacations of Open Space Easements

This Chapter shall not apply to existing single-family parcels except when an application for one of the above discretionary applications is required, nor to Time Extensions for any of the above permits.

This Chapter shall apply to any applications filed on or after August 10, 1988 for Tentative Map, Tentative Parcel Map, Revised Tentative Map and Revised Tentative Parcel Map, Rezone, Major Use Permit, Major Use Permit Modification, and Site Plan. In addition, this Chapter shall apply to any application for Vacation of Open Space Easement filed on or after March 24, 1989; and to any application for an Expired Map, Certificate of Compliance, or Administrative Permit filed on or after June 30, 1989.

Where any portion of a parcel contains environmentally sensitive lands, this Chapter shall be applicable to the portions of the parcel containing the sensitive lands, and to the remainder of the parcel only to the extent necessary to achieve the purpose and intent of this Chapter.

- (b). Resource Protection Study Requirements. A Resource Protection Study submitted shall be accompanied by a plot plan and any such information, maps, plans, documentation, data and analyses as may be required by the Director of Planning and Land Use. It shall also be accompanied by payment of the fee prescribed in San Diego County Administrative Code Section 362. A Resource Protection Study may be processed concurrently with the associated discretionary permit application.

In order to determine if a parcel contains steep slopes, a slope analysis shall be prepared as part of the Resource Protection Study. The analysis must be completed by a qualified person such as a registered or licensed architect, landscape architect, engineering geologist, land surveyor, or civil engineer based upon a topographic

map using ten foot contour intervals or less. The slope analysis shall show the slope categories for the entire property in acres, as required by the Director of Planning and Land Use. Said categories may include the following depending upon the property's plan designation:

Less than 15% slope  
15% and greater up to 25% slope  
25% and greater up to 50% slope  
50% and greater slope

- (d). **Actions to Protect Environmentally Sensitive Lands.** If the Resource Protection Study identifies the presence of environmentally sensitive lands, one or more of the following actions may be required as a condition of approval for the discretionary permit:

- (1). Apply open space easements to portions of the project site that contain sensitive lands;
- (2). Rezone the entire project site through the application of a special area designator for sensitive lands; or
- (3). Other actions as determined by the decision-making body.

**SEC 86.604. Permitted Uses and Development Criteria.**

Within the following categories of sensitive lands, only the following uses shall be permitted and the following development standards and criteria shall be met provided, however, that where the extent of environmentally sensitive lands on a particular legal lot is such that no reasonable economic use of such lot would be permitted by these regulations, then an encroachment into such environmentally sensitive lands to the minimum extent necessary to provide for such reasonable use may be allowed:

- (a). **Wetlands.** The following permitted uses shall be allowed:

Redundant language

- (1). Aquaculture, provided that it does not harm the natural ecosystem.
- (2). Scientific research, educational or recreational uses, provided that they do not harm the natural ecosystem
- (3). Removal of diseased or invasive exotic plant species as identified and quantified in writing by a qualified biologist and approved in writing by the Director of Planning and Land Use.

This allowance provides for the removal of diseased and invasive plant species that may adversely impact the well being of a wetland if they continue to grow unattended. Prior to removal, however, a qualified biologist must submit a written report to DPLU that identifies the



species type that must be removed and the way in which it will be removed from the wetland. The report must be approved by the department prior to commencement of any work.

- (4). Wetland creation and habitat restoration, revegetation and management projects where the primary goal is to restore or enhance biological values of the habitat, and the activities are carried out pursuant to a written management/enhancement plan approved by the Director of Planning and Land Use.

Clarification language.

- (5) Crossings of wetlands for roads, driveways and trails/pathways dedicated and improved to the limitations and standards under the County Trails Program, that are necessary to access adjacent lands, when all of the following conditions are met:
- (aa) There is no feasible alternative that avoids the wetland;
  - (bb) The crossings are limited to the minimum number feasible;
  - (cc) The crossings are located and designed in such a way as to cause the least impact to environmental resources, minimize impacts to sensitive species and prevent barriers to wildlife movement (e.g., crossing widths shall be the minimum feasible and wetlands shall be bridged where feasible);
  - (dd) The least-damaging construction methods are utilized (e.g., staging areas shall be located outside of sensitive areas, work shall not be performed during the sensitive avian breeding season, noise attenuation measures shall be included and hours of operation shall be limited so as to comply with all applicable ordinances and to avoid impacts to sensitive resources);
  - (ee) The applicant shall prepare an analysis of whether the crossing could feasibly serve adjoining properties and thereby result in minimizing the number of additional crossings required by adjacent development; and
  - (ff) There must be no net loss of wetlands and any impacts to wetlands shall be mitigated at a minimum ratio of 3:1 (3 acres of wetland creation, restoration, or enhancement, to every 1 acre impacted).

These amendments are intended to allow for road crossings when other alternatives are not feasible and impacts are minimized and mitigated.

- (b). Wetland Buffer Areas. In the wetland buffer areas, permitted uses shall be limited to the following uses provided that there is no overall decrease in biological values and functions of the wetland or wetland buffer:

Clarification language.
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- (1). Other improvements necessary to protect adjacent wetlands.
  - (2). All uses permitted in wetland areas.
- (c). Floodways. The development of permanent structures for human habitation or as a place of work shall not be permitted in a floodway. Use permitted in a floodway shall be limited to agricultural, recreational, and other such low-intensity uses provided, however, that no use shall be permitted which will substantially harm the environmental values of a particular floodway area. Mineral resource extraction shall be permitted subject to an approved Major Use Permit and Reclamation Plan, provided that mitigation measures are required which produce any net gain in the functional wetlands and riparian habitat.

Modifications to the floodway must meet all of the following criteria:

- (1). Concrete or rip-rap flood control channels are allowed only where findings are made that completion of the channel is necessary to protect existing buildings from a current flooding problem. Buildings constructed after the enactment of this Ordinance shall not be the basis for permitting such channels.
  - (2). Modification will not unduly accelerate the velocity of water so as to create a condition which would increase erosion (and related downstream sedimentation) or would be detrimental to the health and safety of persons or property or adversely affect wetlands or riparian habitat.
  - (3). In high velocity streams where it is necessary to protect existing houses and other structures, minimize stream scour, or avoid an increase in the transport of stream sediment to downstream wetlands and other environmentally sensitive habitat areas, grade control structures, and other erosion control techniques, including the use of rip-rap, that are designed to be compatible with the environmental setting of the river, may be permitted. The use of rip-rap shall be allowed only when there is no other less environmentally damaging alternative feasible.
- (d). Floodplain Fringe. All uses permitted by zoning and those that are allowable in the floodway are allowable in the floodplain fringe, when the following criteria are met:
- (1). Fill shall be limited to that necessary to elevate the structure above the elevation of the floodway and to permit minimal functional use of the

structure (e.g., fill for access ramps and drainage). If fill is placed in the floodplain fringe, the new bank of the creek shall be landscaped to blend with the natural vegetation of the stream and enhance the natural edge of the stream.

- (2). Any development below the elevation of the 100 year flood shall be capable of withstanding periodic flooding.
- (3). The design of the development shall incorporate the findings and recommendation of a site-specific hydrologic study to assure that the development: (aa) will not cause significant adverse water resource impacts related to quality or quantity of flow or increase in peak flow to downstream wetlands, lagoons and other sensitive habitat lands; and (bb) neither significantly increases nor contributes to downstream bank erosion and sedimentation of wetlands, lagoons or other sensitive habitat lands.
- (4). Lot configurations shall be designed in such a manner as to minimize encroachment into the floodplain. The proposed development shall be set back from the floodway boundary a distance equal to 15% of the floodway width (but not to exceed 100 feet), in order to leave an appropriate buffer area adjacent to the floodway. The setback may be greater if required by Subparagraph (6) below.

Following review of a site-specific flood analysis, the floodplain setback required by this Paragraph may be reduced by the Director of Planning and Land Use or the applicable hearing body, upon making all of the following findings:

- (aa) Practical difficulties, unnecessary hardship, or results inconsistent with the general purposes of this Chapter would result from application of the setback; and
- (bb) The reduction in setback will not increase flood flows, siltation and/or erosion, or reduce long-term protection of the floodway, to a greater extent than if the required setback were maintained; and
- (cc) The reduction in setback will not have the effect of granting a special privilege not shared by other property in the same vicinity; and
- (dd) The reduction in setback will not be materially detrimental to the public health, safety, or welfare, or injurious to the property or improvement in the vicinity in which the property is located; and
- (ee) The reduction in setback will not be incompatible with the San Diego County General Plan.

- (5). Where appropriate, flowage and/or open space easements shall be used to ensure future development will not occur in the floodplain.
- (6). In areas where the Director of Public Works has determined that the potential for erosion or sedimentation in the floodplain is significant, all proposed development shall be set back from the floodway so that it is outside the Erosion/Sedimentation Hazard Area shown on County floodplain maps. Development will only be allowed in the Erosion/Sedimentation Hazard Area when the Director of Public Works approves a special study demonstrating that adequate protection can be achieved in a manner that is compatible with the natural characteristics of the river.
- (7). If the subject floodplain fringe land also constitutes wetlands, wetland buffer areas, steep slope lands, sensitive habitat lands or significant prehistoric or historic site lands, the use restrictions herein applicable to such areas shall also apply.
- (e). Steep Slope Lands.
- (1). Density Formula. When a parcel is located within a plan designation which bases lot size on slopes, the number of lots and/or number of dwelling units created shall be constrained by the following formula:
- $$\begin{aligned} &\text{Acres in slopes less than 15\%} \div \text{minimum lot size permitted by General Plan} \\ &+ \text{Acres in slopes of 15\%/less than 25\%} \div \text{minimum lot size permitted by General Plan} \\ &+ \text{Acres in slopes of 25\%/less than 50\%} \div \text{minimum lot size permitted by General Plan} \\ &+ \text{Acres in slopes of 50\% or greater} \div \text{minimum lot size permitted by General Plan} \\ \hline &= \text{Maximum number of lots and/or dwelling units allowable} \end{aligned}$$
- A Planned Residential Development, lot area averaging, or cluster development shall be required to use the density allowed a standard subdivision using this density formula.
- Projects obtaining a density bonus, pursuant to Section 4120 of the Zoning Ordinance, are subject to the above density formula.
- (2). Project Design and Open Space to Protect Steep Slopes. In designing lot configuration on steep slope lands in all land use designations, parcels shall be created in a manner which minimizes encroachment onto steep slope lands. Where 10% or more of a lot contains steep slope lands, that portion of the lot containing such lands shall be placed in an open space easement unless the lot is equal to or greater than 40 acres or a sensitive resource area designator has been applied to that lot pursuant to the Zoning Ordinance.

The open space easement shall not include any area of encroachment within the limits of the encroachment table (2)(aa). The terms of the open space easement shall provide for sufficient encroachments necessary for access, clearing, and all exceptions to the encroachment limitations identified in (2)(bb). New agricultural operations will also be allowed in such open space easements with approved grading or clearing permits, provided any other type of sensitive lands present are protected as required by the applicable sections of this Chapter.

- (aa) For all types of projects, the maximum encroachment that may be permitted into steep slope lands shall be as set forth in the following table. This encroachment may be further reduced due to environmental concerns or other design criteria.

Percentage of Lot in Steep Slope Lands	Twenty-Five Percent Slope Encroachment Allowance	Maximum Encroachment Allowance as Percentage of Area in Steep Slope Lands
75% or less	10%	
80%	12%	
85%	14%	
90%	16%	
95%	18%	
100%	20%	

- (bb) Notwithstanding the provisions of Paragraph (aa) above, the following types of development shall be allowed on steep slope lands and shall not be subject to the encroachment limitations set forth above:

- (i) All public roads identified in the Circulation Element of the County General Plan or adopted community or subregional plans, provided that findings are made by the hearing body approving the application that no less environmentally damaging alternative alignment or non-structural alternative measure exists.
- (ii) Local public streets or private roads and driveways which are necessary for primary or secondary access to the portion of the site to be developed on steep slope lands of less than 25%, provided no less environmentally damaging alternative exists. The determination of whether or not a proposed road or driveway qualifies for an exemption, in whole or in part, shall be made by the Director of Planning and Land Use based upon an analysis of the project site.



- (iii) Public and private utility systems, provided that findings are made that the least environmentally damaging alignment has been selected. However, septic systems are not included in this exemption unless Department of Health Services has certified that no grading or benching is required.
- (iv) Areas with native vegetation, which are cleared or trimmed to protect existing or proposed structures in potential danger from fire, provided that the area of such clearance is the minimum necessary to comply with applicable fire codes or orders of fire safety officials and that such slopes retain their native root stock or are planted with native vegetation having a low fuel content, and provided further that the natural landform is not reconfigured.
- (v) Trails for passive recreational use according to approved park plans.
- (vi) On any lot created on or before August 10, 1988, a maximum disturbed area of 20% of the entire lot, or sufficient area to accommodate 3,000 square feet of building footprint (whichever is greater) shall be permitted to provide for reasonable use of existing lots.
- (vii) Any on-going existing agricultural operation, such as the cultivation, growing and harvesting of crops and animals. Land left fallow for up to five years shall be considered to be an existing agricultural operation. An on-going existing agricultural operation does not include uses located within the agricultural operation that are not in themselves related to agriculture.

Clarification language.

- (3). Waiver of Open Space Easement. The steep slope open space easement requirement may be waived when the authority considering an application listed at Section 86.603 (a) above makes the following findings:
  - (aa). The slope is an insignificant visual feature and isolated from other landforms, or surrounding properties have been developed on steep slopes such that this project would be considered “infill”; and

- (bb). The property is zoned for .5 acre lots or smaller at the time the application was made, or a concurrent Rezone has been filed; and
  - (cc). The greater encroachment is consistent with the goals and objectives of the applicable community plan; and
  - (dd). Site Plan review is required to ensure consistency of design with these regulations.
- (f). Sensitive Habitat Lands. Development, grading, grubbing, clearing or any other activity or use damaging to sensitive habitat lands shall be prohibited. The authority considering an application listed at Article III, Section 1 above may allow development when all feasible measures necessary to protect and preserve the sensitive habitat lands are required as a condition of permit approval and where mitigation provides an equal or greater benefit to the affected species.
- (g). Significant Prehistoric or Historic Sites. Development, trenching, grading, clearing and grubbing, or any other activity or use damaging to significant prehistoric or historic site lands shall be prohibited, except for scientific investigations with an approved research design prepared by an archaeologist certified by the Society of Professional Archaeologists.

#### **SEC. 86.605. Exemptions**

This Chapter shall not apply to the following:

- (a). Any project for which and to the extent that a vesting Tentative Map approved prior to August 10, 1988, or a Public Benefit Agreement approved prior to June 30, 1989, confers vested rights under County ordinance or State or Federal law to proceed with development notwithstanding the enactment of this Chapter, or its predecessor Ordinances Nos. 7521, 7549, 7595, 7596, 7631, 7685, 7739, and 7968 (all N.S.) .
- (b). All or any portion of a Specific Plan which has at least one Tentative Map or Tentative Parcel Map approved prior to August 10, 1988, provided that the Planning Commission or, on appeal, the Board of Supervisors, makes the following findings at a noticed public hearing:
  - (1). The applicant has, with regard to the portion sought to be exempted, prior to August 10, 1988, incurred substantial public facilities or infrastructure expenditures and performed substantial grading or construction of physical improvements to serve the portion outside of the approved map in good faith.
  - (2). If there are located wetlands or floodplains or riparian habitat on the portion sought to be exempted, that (aa) none of said lands is affected directly or substantially by the project, or (bb) that measures have been taken which avoid development on said lands.

This Chapter shall also not apply to any amendment to such Specific Plan meeting the above requirements, and which does not increase the density of the Specific Plan and which is in closer conformity to this Chapter with respect to the preservation of environmentally sensitive lands, nor to any amendment to a Specific Plan which is required by a condition of a Specific Plan approved prior to August 10, 1988, in order to apply for a Tentative Map or use permit for an area within the Specific Plan, provided such area has previously been found to satisfy the requirements of this section. This Chapter shall also not apply to any Specific Plan or portion thereof for which these findings were made and for which a determination of exemption was granted from the Interim Sensitive Lands Ordinance (Ordinance Nos. 7521, 7549, 7595 and 7596 (all N.S.)).

- (c). Any essential public facility or project, or recreational facility which includes public use when the authority considering an application listed at Section 86.603 (a) above makes the following findings:
- (1). The facility or project is consistent with adopted community or subregional plans;
  - (2). All possible mitigation measures have been incorporated into the facility or project, and there are no feasible less environmentally damaging location, alignment, or non-structural alternatives that would meet project objectives;
  - (3). Where the facility or project encroaches into a wetland or floodplain, mitigation measures are required that result in any net gain in the wetland and/or riparian habitat;
  - (4). Where the facility or project encroaches into steep slopes, native vegetation will be used to revegetate and landscape cut and fill areas; and
  - (5). No mature riparian woodland is destroyed or reduced in size due to otherwise allowed encroachments.
- (d). Any sand, gravel or mineral extraction project, provided that the following mitigation measures are required as a condition of a Major Use Permit approved for such project:
- (1). Any wetland buffer area shall be restored to protect environmental values of adjacent wetlands;
  - (2). In a floodplain, any net gain in functional wetlands and riparian habitat shall result in or adjacent to the area of extraction;
  - (3). Native vegetation shall be used on steep slope lands to revegetate and landscape cut and fill areas in order to substantially restore the original habitat value, and slopes shall be graded to produce contours and soils

which reflects a natural landform which is consistent with the surrounding area; and

- (4). Mature riparian woodland may not be destroyed or reduced in size due to sand, gravel or mineral extraction.

Use of the extraction area after reclamation shall be subject to all conditions of this Chapter.

- (e). Any project for which the Board of Supervisors has determined that application of this Ordinance would result in the applicant being deprived of all reasonable economic use of property in violation of Federal or State Constitutional prohibitions against the taking of property without just compensation.
- (f). Any project located within the Upper San Diego River Improvement Project's redevelopment area boundaries.
- (g). Any project for which the Director of the Department of Planning and Land Use has determined in writing that it can be seen with certainty that either no environmentally sensitive lands exist on the property, or that all environmentally sensitive lands on the property are assured of being protected by a prior permit to the same standards as those contained in this Chapter.
- (h). Any project located within a Specific Plan, within the Urban Limit Line, and within an approved Revitalization Action Plan established prior to August 10, 1988, where the Board of Supervisors finds that an amendment to that Specific Plan makes the project more clearly conform to this Chapter and where there is a public benefit beyond the boundaries of the project and it is found that the project will revitalize and/or stimulate revitalization of the community.
- (i). Any project located within the approximately 22,500 acre property known as "Otay Ranch", if determined to be consistent with a Comprehensive Resource Management and Protection Program which has been adopted by the Board of Supervisors for the "Otay Ranch".
- (j). The continuation of an any\_on-going existing agricultural operation, such as the cultivation, growing and harvesting of crops and animals. Land left fallow for up to five years shall be considered to be an existing agricultural operation. Proposed non-agricultural uses such as a residential subdivision or commercial development, shall not be exempt from this ordinance, regardless of the status of the existing agricultural operation.

Proposals have been submitted where the existing agricultural operations are proposed to continue, but to a much smaller scale where the use becomes "incidental." For example, a property with an active orchard operation proposes to be subdivided into residential parcels and as part of the proposal, the orchard operations will continue, but under the responsibility of the individual property owners. In the past, applicants have tried to apply RPO agricultural exemption to such projects. This language is intended to clarify that the allowance is limited to

on-going existing agricultural operations ONLY and any proposal to include uses not directly related to agriculture do not qualify.

- (k). (With reference only to the definitions of “floodplain”, “floodplain fringe”, and “floodway” and the provisions of Section 86.604 (c) and (d) of this Chapter). Any modification to the floodplain, floodplain fringe, or floodway pursuant to a project within the community of Jacumba when the following findings are made:
- (1). The project is located within a Specific Planning Area or Country Town boundary.
  - (2). The project will result in a socio-economic benefit through the revitalization of an existing community.
  - (3). The project will result in alleviation of flood danger to existing structures in Jacumba, and the means for funding all required flood improvements and obtainment of rights-of-way has been secured.
  - (4). Any flood control improvements will not adversely affect significant wetland and riparian habitats and will create any net gain in such habitats.
  - (5). Except as expressly exempted herein, the project shall be in conformance with the County General Plan, the Zoning Ordinance, and other applicable regulations or policies of the County at the time an application is filed with the County.

#### **SEC. 86.606 Enforcement**

- (a) **Authority.** The Director of Planning and Land Use (hereinafter, the "Director") shall have the authority to enforce all provisions of this Chapter. The Director may enter any property or premises for the purpose of determining compliance with this Chapter. Whenever the Director determines that a violation of Section 86.604 has occurred, he or she may order work to be stopped and/or repairs or corrections to be made, by serving written notice on the owner, permittee or any person engaged in the doing or causing such violation, and such persons shall immediately stop such violation until authorized by the Director in writing to proceed.
- (b) **Violations - Criminal Penalties.** Any person violating any provision of Section 86.604 shall be deemed guilty of a misdemeanor. Each day or portion of a day that any person violates or continues to violate Section 86.604 constitutes a separate offense and may be charged and punished without awaiting conviction of any prior offense. Any conviction of a misdemeanor under this Chapter shall be punishable by imprisonment in the County jail not exceeding six months, or by a fine not exceeding \$1,000, or by both. Paying a fine or serving a jail sentence shall not relieve any person from responsibility for correcting any condition which violates any provision of this Chapter.



- (c) **Violations - Public Nuisance.** Any building or structure erected, constructed, altered or maintained, or any use of or activity conducted upon property contrary to the provisions of Section 86.604 shall be, and the same is hereby declared to be, unlawful and a public nuisance. The public nuisance may be abated in accordance with the Uniform Public Nuisance Abatement Procedures contained in Chapter 2, Division 6, Title 1 (commencing with Section 16.201) of this Code or in any other manner provided by law, including: upon order of the Board of Supervisors, the County Counsel is authorized to commence necessary proceedings provided by law to abate, remove and/or enjoin such public nuisance.
- (4) **Administrative Remedies.** The Director may pursue the Administrative Remedies set forth at Division 8 of Title 1 of this Code, including the issuance of Administrative Citations pursuant to Chapter 1 (commencing with Section 18.101) of said Division 8.
- (5) **Injunctive or Declaratory Relief.** In addition to or in lieu of other remedies specified in this Chapter, any violation of Section 86.604 may be enforced by a judicial action for injunctive or declaratory relief.
- (6) **Civil Penalties.** As part of a civil action filed by the County to enforce provisions of this Chapter, a court may assess a maximum civil penalty of \$2,500 per violation of this Chapter for each day during which any violation of any provision of this Chapter is committed, continued, permitted or maintained by such person(s). In determining the amount of any civil liability to be imposed pursuant to this Chapter, the superior court shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether any discharge caused by the violation is susceptible to cleanup or abatement, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, the extent of any advantage gained by an unfair business practice, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.
- (7) **Cost Recovery.** In addition to other penalties and remedies permitted in this Section, the following may be awarded without monetary limitations in any civil action: Costs to investigate, inspect, monitor, survey, or litigate; Costs to place or remove soils or erosion control materials; costs to correct any violation; and costs to end any adverse effects of a violation; Compensatory damages for losses to the County or any other plaintiff caused by violations; and/or Restitution to third parties for losses caused by violations.
- (8) **Site Restoration.** Whenever the Director determines that a violation of Section 86.604 has occurred, he or she may order that the site be restored to the condition it was in previous to the violation. Restoration ordered may include revegetation of the site with species of plants identical to or serving biological resource values as close as possible to those of the vegetation which existed on the site prior to the violation. If the Director determines that restoration to such previous condition would result in a condition which is unsafe or does not conform to this division or other applicable laws, or is otherwise impractical, the Director may order restoration to such other condition as he or she determines to be as close as practical to the site's previous condition; provided however, that the Director shall require that any adverse

environmental impacts which resulted from the violation be mitigated to at least the same extent as would have been required if the impacts occurred as a result of a development project application which was required to comply with the California Environmental Quality Act, the Biological Mitigation Ordinance and other County regulations. Such an order for restoration may require that the restoration work be performed pursuant to plans which the permittee, owner or other responsible person(s) is directed to prepare and submit for the Director's approval. Failure to submit such plans within the time specified in the order for restoration shall constitute a violation of this Chapter. The order may require that permits required by applicable laws or regulations be obtained for the restoration work, including compliance with all requirements for obtaining such permits. The order for restoration may require that adequate security be provided to the Director, to assure completion of the restoration work. The order for restoration may impose time deadlines for performance of certain acts. Failure to timely implement or otherwise comply with an order for restoration shall constitute a violation of this Chapter.

The proposed changes are intended to strengthen the enforceability of the ordinance.

#### **SEC. 86.607 Severability**

If any article, section, subsection, sentence, clause, phrase, part or portion of this Chapter is for any reason held to be invalid or unconstitutional by a final judgment of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. It is hereby declared that this Chapter and each article, section, subsection, sentence, clause, phrase, part or portion thereof would have been adopted or passed regardless of the fact that any one or more articles, sections, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

#### **SEC. 86.608 Relationship to Previous Ordinances.**

- (a) This Chapter is a represents a codification of previously existing regulations, which were enacted, amended, repealed or superseded by several Ordinances, including Ordinances Nos. 7521, 7549, 7595, 7596, 7631, 7685, 7739, and 7968 (all N.S.) .
- (b) Ordinance No. 7631 (N.S.), adopted on May 31, 1989, enacting regulations entitled, "Resource Protection Ordinance", contained the following text explaining its relationship to previously existing regulations:

"This Ordinance shall take effect 30 days after its adoption. However, Ordinance Number 7521 (N.S.), An Interim Ordinance Requiring Certain Discretionary Permits in the Unincorporated Territory of San Diego County to be Consistent With the Sensitive Land Ordinance, as extended and amended by Ordinance Numbers 7549 (N.S.), 7595 (N.S.), and 7596 (N.S.) is in effect until June 30, 1989, and said Ordinances regulate the same matter as will be regulated by the Resource Protection Ordinance. Therefore, this Resource Protection Ordinance shall not become operative until the expiration of the said Ordinance Numbers 7521 (N.S.), 7549 (N.S.), 7595 (N.S.), and 7596 (N.S.), and shall become operative immediately upon such expiration.

"... This Ordinance intends to carry forward many of the regulations contained within Ordinance No. 7521 (N.S.), 7549 (N.S.), 7595 (N.S.), and 7596 (N.S.), with further modifications. Therefore, the application provisions of this Ordinance (at Article III, Section 1 above) [see now Section 86.603 (a) above] relate back to dates when said prior Ordinances were enacted or amended. Any decision on a project subject to the Interim Sensitive Lands Ordinance made on or after June 30, 1989 shall be based upon the regulations in the Resource Protection Ordinance."

Legal changes that are required in order to make the RPO part of the County Regulatory Code.
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**Section 3.** Effective Date and Publication. This ordinance shall take effect and be in force thirty days after the date of its passage, upon which date the San Diego County "Resource Protection Ordinance", as adopted by Ordinance No. 7631 and amended by Ordinances Nos. 7685, 7739, and 7968, shall be superseded by this ordinance and be of no further independent force or effect. Before the expiration of fifteen days after its passage, a summary of this ordinance shall be published once, with the names of the members voting for and against the same, in the \_\_\_\_\_, a newspaper of general circulation published in the County of San Diego.